

Delaware Guardianship Commission Meeting

October 23, 2017 - MINUTES

Present were:

Lexie McFassel, Esq.

Patricia Justice, Esq.

Suzanne I. Seubert, Esq.

James R. Reynolds

Joyce Hayes, Esq.

Lisa Barchi, Esq.

Sherri Hageman, NCG

I. OPENING REMARKS

Welcome. Quorum was present; Vote on July 2017 minutes taken, minutes were passed. Suzanne Seubert's middle initial will be corrected from "L" to "I".

II. OLD BUSINESS

- Physician's Affidavit

It was reported that the Guardianship, Trusts and Estates sub-committee of the Rules Committee for the Court of Chancery has completed work on a revised Physician's Affidavit and has submitted the revision to the larger Rules Committee for their consideration. The Commission members indicated they would be interested in seeing the final revision submitted by the sub-committee. ACTION ITEM.

- Limited Guardianship Issue:

Also reported that the GTE sub-committee for the larger Rules committee had drafted language for Title 12 of the Delaware Code, Chapter 39, that was designed to allow the Court to appoint limited guardians. It was reported that the proposal involved very minor changes. It will be reviewed by the larger rules committee.

The Commission was also interested in seeing that proposal.

Further news regarding the issue (which has been raised prior to this with the Commission and is an ongoing conversation is that the Public Guardian had recently spoken to Wayne Smith of the Delaware Healthcare association, in a follow-up conversation to the April Commission meeting and a teleconference on how to resolve the human and financial cost of "relative-dumping" whereby family brings their family members with non-acute physical or mental care issues to the emergency room and leaves them there, in order to facilitate placement for their relative somewhere other than at their home. These individuals may remain in the hospital for months and remain long after they no longer need acute care. This practice costs the individual in terms of the danger of hospital acquired illnesses, and the community in terms of fewer hospital beds available to those in acute need and the financial cost overall is staggering.

It has been discussed in the Commission meetings that forms of limited guardianship or other solutions to boost the numbers of people empowered to legally manage the individual's money, retrieve financial records, and resolve financial barriers to the LTC Medicaid process would reduce this human and financial cost to the citizens and the State of Delaware.

Mr. Smith met with Chief Justice Strine on this issue, and the Chief Justice expressed a willingness to review the issue, and it is expected there will be further discussion.

The PG thinks it would be beneficial to bring more players to the table to discuss this issue, since any legislation meant to address the issue would fall short of fully addressing the problem unless it includes care providers at all points in the process. The PG mentioned that Senator Chris Coons has previously held round tables on Medicaid Issues and how best to encourage the execution of documents that enable financial management to resolve this, and that perhaps we (DGC) should inquire whether he would be interested in doing so again, and pulling people to the table for a good discussion. Would also go to the goals of informational campaign.

Mr. Smith has requested that taking steps to bring a group together may be premature, and requested that the PG wait until after he spoke to the Chief Justice again.

There was also further discussion of bringing groups with known plans of pursuing amendments to Title 12 together. Suzanne requested clarification as to whether the draft by the Estates and Trusts section of the DSBA had been presented to the Rules Sub-Committee and it was reported by PG that it had not. (NOTE by author: This information has since changed, since the draft was put out to the sub-committee shortly after the Commission meeting.)

GOALS:

1. Statutory Amendment to include Limited Guardianship, Adjustments to the law regarding Minor Trust Accounts to allow investment, and allowance for the Office of the Public Guardian to act solely as Representative Payee for clients of DHSS without appointment as guardian.¹
2. Money Management, looking into the DE Money Management program to see if it was not funded in last budget, and further action.
3. "Medicaid Cutout" payment, to encourage professional guardians, or to see if it could be defined as a fundable service under waivers.
4. Informational Campaign on estate planning to avoid need for guardianships, or at least, OPG payment of mileage to private attorneys in order for them to travel with an informational program.

III. New Business

Meeting was adjourned at 4 p.m.

¹ After research on liability of RP's on acting as such).